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IN THE

# Supreme Court of the United States

**October Term, 1956**

No. 714

In the Matters

of

THIRD AVENUE TRANSIT CORPORATION, *et al.*,
*Debtors.*

A. PHILIP WOOLFSON,
*Petitioner,*

*against*

LESTER T. DOYLE, As Trustee in Reorganization, *et al.*,
*Respondents.*

## BRIEF OF REORGANIZATION TRUSTEE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Dated: February 14, 1957.

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## BRIEF OF REORGANIZATION TRUSTEE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

### Introductory.

A. Philip Woolfson (hereinafter "Petitioner"), seeks a writ of certiorari to review that part of a judgment of the United States Court of Appeals for the Second Circuit, entered November 30, 1956, which affirmed orders of the United States District Court for the Southern Dis-

trict of New York, Hon. Edward J. Dimock, presiding, approving (8-13)* and confirming (27-32) a Plan of Reorganization (hereinafter "the Joint Plan") under Chapter X of the Bankruptcy Act for Third Avenue Transit Corporation (hereinafter "Third Avenue") and subsidiaries.

Petitioner became a stockholder of record of Third Avenue on July 27, 1956 (60). Almost a year earlier, on August 5, 1955, the District Court had entered an order finding Third Avenue to be insolvent (34-5) and on August 8, 1955, the New York Stock Exchange had suspended trading in Third Avenue stock (60). Petitioner asserts that he is also an Adjustment bondholder. He did not, however, file a proof of claim as such and his sole status of record is as a stockholder.

The Public Service Commission of the State of New York has certified that the Joint Plan is in the public interest (207-12) and the Securities and Exchange Commission has reported that the Joint Plan is fair and equitable, and feasible (149-70).

Following the action of those regulatory bodies, the Joint Plan was approved by the District Court, accepted by large majorities of both classes of bondholders, and by the other creditor groups, and then confirmed by the Court.

Only Petitioner appealed from the orders approving and confirming the Joint Plan.

On November 30, 1956 the Court of Appeals unanimously affirmed in all respects the orders of the District Court (238 F. 2d 665).

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* References are to the Joint Appendix unless otherwise indicated.

## Questions Presented.

(1) Did the Court of Appeals and the District Court err in their determinations that the claims filed by the holders of Adjustment bonds determined the voting base of that class, and that the acceptance of the Joint Plan by the holders of more than two-thirds in amount of those claims constituted due acceptance by that class under Chapter X of the Bankruptcy Act?

(2) Did the Court of Appeals and the District Court err in their determinations that the notice given to creditors and stockholders with respect to the hearing at which the District Court considered approval of the Joint Plan complied with the requirements of Chapter X of the Bankruptcy Act?

## Statement.

### (a) Petitioner's Statement.

The statement on behalf of Petitioner is inaccurate and incomplete in a number of respects. For example, Petitioner states that the Joint Plan "had been approved by the District Court on July 24, 1956 at a hearing without notice to the debtor's stockholders and other interested parties" (P.,* p. 5). Statutory notice of the commencement of the hearing at which the Joint Plan was approved was in fact given, and the hearing was adjourned from time to time by announcement in open court as it was stated in the original notice that it might be (*post*, pp. 23-27). In addition to the original notice required by the statute, two additional notices of the continuance of the hearing were sent to all creditors and stockholders (*post*, p. 28).

* References preceded by "P." are to the petition for certiorari.

Petitioner also states that the Joint Plan was "the third reorganization plan filed by the Trustee" (P., p. 6). The Joint Plan was not "filed by the Trustee." It was filed by an Adjustment Bondholders Committee (*post,* p. 7). Some thirty plans, amendments and other plan proposals were filed in the District Court (R.* 24,694-99). The Joint Plan, as it finally evolved, contained many features appearing in prior plans. From time to time amendments were made to various plans to meet changing conditions and the objections and suggestions of the various bondholder groups, the Securities and Exchange Commission, and the Public Service Commission. New features were added, some old features retained, and others eliminated.

**(b) The Debtor Corporations.**

At the commencement of the reorganization proceedings, Third Avenue and its transit subsidiaries operated a wholly intrastate bus system in the City of New York and to a lesser extent in the adjacent County of Westchester. A history of the system, a description of the companies which comprised the system, and an exposition of the causes leading to the bankruptcy proceedings are set forth in the report of the Securities and Exchange Commission (72-83).

**(c) The Reorganization Proceedings.**

The reorganization proceedings were commenced by the filing of an involuntary petition, under Chapter X of the Bankruptcy Act, against Third Avenue in the District Court on October 25, 1948. On June 21, 1949 the petition,

* References preceded by "R." refer to the record filed in the Court of Appeals.

as amended, was approved by the Court upon the consent of Third Avenue. On the same day a voluntary petition for the reorganization of Third Avenue's operating transit subsidiaries was also approved and the same trustees were appointed for all debtors (1-2).

The major developments in the reorganization proceedings leading up to consummation of the Joint Plan were as follows:

Pursuant to an order of the Court, Lester T. Doyle, Trustee in Reorganization (hereinafter "the Trustee") sent a copy of a Plan of Reorganization proposed by him and a notice of hearing thereon to all creditors, stockholders and other interested parties (Exs.* 1, 2).

The notice informed them that at the hearing to be held on January 15, 1953, they had "the right to appear * * * and make objections or propose amendments to the Plan of Reorganization, or to propose another plan or plans of reorganization." The notice also informed them that it was anticipated that the Court would announce a subsequent date on which it would hear testimony and that the hearing might be adjourned thereafter from time to time with notice of the adjourned dates to be announced at the hearing (Ex. 1). The hearing was adjourned to further dates from time to time by announcement in open court until the Joint Plan was finally approved. Various amendments, objections and other plans were filed (3).

There was widespread participation in these proceedings by numerous protective committees for both Refunding and Adjustment bondholders, their indenture trustees, the Securities and Exchange Commission, committees on be-

* References preceded by "Ex." are to exhibits introduced in evidence by the Trustee in the proceedings in the District Court.

half of tort creditors and representatives of stockholders (7). A vast amount of testimony, covering thousands of pages, was given by expert witnesses on behalf of the Trustee, the Refunding bondholders, the Adjustment bondholders and the stockholders (R. 24,693-94).

In July 1954 the Trustee sent a report to all creditors and stockholders advising them, among other things, of the progress of the plan hearings, and of their continuance (R. 23,774).

On June 19, 1955 the Trustee submitted an Amended Plan (84) and, pursuant to an order of the Court, sent a notice of the continuance of plan hearings and a summary of the Amended Plan to all creditors and stockholders (36-42; 62-63).

On August 5, 1955 "The absence of any hope for the stockholders became so clear* that [the District Judge] was constrained to declare that they had no interest in the property" (I**-7; 34-5).

On the same day the Court made an order finding that six plans were worthy of consideration and referring them to the New York Public Service Commission and to the Securities and Exchange Commission (84). Following hearings before the Public Service Commission, that Com-

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* Before Petitioner and the other stockholders can have any interest, it is necessary that the claims of the creditors, aggregating in excess of $70,000,000 (83; I-106) be satisfied in full (*Case* v. *Los Angeles Lumber Products Co.*, 308 U. S. 106). The Securities and Exchange Commission found a value of between $16,500,000 and $17,000,000 (127) and the N. Y. Public Service Commission found a value not in excess of $15,000,000 (180; 186). The Trustee and his independent engineer testified to valuations in the range of $20,000,000 to $23,000,000 (276; 269). Under the Joint Plan the creditors will realize in excess of $23,000,000.

** References preceded by "I" refer to booklet entitled "Information for Voting on Joint Plan of Reorganization."

mission filed a report, dated January 9, 1956, finding that none of the plans met with its approval (171-86).

Thereafter the Trustee filed a Plan dated February 15, 1956. The Court found this plan worthy of consideration and referred it to the Public Service Commission and the Securities and Exchange Commission (4). The Plan was thereafter modified and, on March 29, 1956, the Public Service Commission filed its decision approving it (4).

On May 9, 1956, however, the Securities and Exchange Commission filed an Advisory Report which concluded that the modified Plan was not fair and equitable, and feasible (70-145). Further modifications were made to the modified Plan and it was again referred to the Securities and Exchange Commission. On May 23, 1956 that Commission filed a supplemental report that the modified Plan still did not meet with its approval (146-148).

On June 1, 1956 a Committee for Adjustment bondholders filed a plan of reorganization involving the acquisition by Fifth Avenue Coach Lines, Inc. (formerly New York City Omnibus Corporation) of a controlling interest in the Third Avenue Transit System. On June 4, 1956 the same Committee filed a substitute plan and on June 5, 1956 the Court entered orders referring the Trustee's above Plan, as further modified, and the said Committee's plan to both Commissions (5).

Further negotiations between the Trustee and Fifth Avenue Coach Lines, Inc. (hereinafter "Fifth Avenue") resulted in Fifth Avenue substantially improving its offer and the said Committee's plan was amended under date of June 26, 1956 to incorporate the additional benefits for the creditors. The Trustee thereupon withdrew his Plan, and adopted the said Committee's plan, as amended (the "Joint Plan").

By order dated June 27, 1956, the Court referred the Joint Plan to the two commissions. Under date of July 17, 1956 the Public Service Commission certified its approval of the Joint Plan (207-12) and on July 23, 1956 the Securities and Exchange Commission filed a favorable Advisory Report, finding that the Joint Plan was fair and equitable, and feasible (149-70).

On July 26, 1956 the Court made its order approving the Joint Plan (8-13) and on August 13, 1956 the Court made an order fixing the procedure for voting on the Joint Plan and providing for the transmittal of information and ballots to security holders and creditors. Pursuant to such order, copies of the Joint Plan, and a substantial amount of information, were sent to all creditors and stockholders (Ex. 456). The voting period was extended from time to time and additional information was transmitted to creditors in an effort to secure a large and representative vote (Ex. 458).

On September 28, 1956 the Trustee reported to the Court that the Joint Plan had been accepted by the requisite majority of each of the classes of creditors entitled to vote thereon. Proofs of claim and ballots were filed by the holders of approximately 77% in amount of the Refunding bond issue and over 99% in amount of these claims were voted to accept the Joint Plan. Proofs of claim and ballots were filed by the holders of approximately 72% in amount of the Adjustment bond issue and approximately 84% in amount of these claims were voted to accept the Joint Plan (22-26, 390-91).

On September 29, 1956 the Trustee sent notice of a hearing on confirmation of the Joint Plan to all creditors and stockholders (Ex. 459). Such hearing was held and

Petitioner's objections were heard (213-36). On October 8, 1956, the Court entered its order confirming the Joint Plan (27-32).

## The Joint Plan.

The Joint Plan* provides for the acquisition by Fifth Avenue, an operator of buses in the City of New York (150-2), of all of the stock of the Reorganized Company in exchange for $4,881,090 in cash and approximately 336,088 shares of the capital stock of Fifth Avenue, and for the issuance by the Reorganized Company of $8,528,000 of new 6% bonds.

### (a) Refunding Bondholders.

The holders of the Third Avenue 4% First Refunding Mortgage bonds receive a $575 new 6% Bond of the Reorganized Company and $424 in cash for each $1,000 original face amount Refunding bond.**

The District Judge held that the Refunding Mortgage claim of approximately $14,250,000 was receiving the equivalent of payment in full (I-8). His conclusion is abundantly supported by all of the Refunding bondholder groups, participating actively in the proceeding, who joined in supporting the Joint Plan (I-30) and by the bondholders themselves. Over 99% of the Refunding bond claims filed by the holders thereof were voted to accept (22, 390-91).

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* For a summary of the Joint Plan see I-1-2; the entire Plan is printed at I-30-41.

** $350 was paid on account of each such bond during the reorganization proceedings. This is an amount in excess of the accruing interest thereon.

**(b) Adjustment bondholders.**

The holders of Third Avenue Adjustment Mortgage 5% Income bonds receive 15 shares of Fifth Avenue stock for each $1,000 principal amount Adjustment bond.*

The stock of Fifth Avenue is listed on the New York Stock Exchange and is selling for approximately $28 per share, indicating a value, in terms of market price, of over $9,000,000 (152), for the stock to be distributed pursuant to the Joint Plan.

All protective committees for Adjustment bondholders endorsed the Joint Plan (I-30).** Approximately 84% of the Adjustment bond claims filed by the holders thereof were voted to accept (23, 390-91).

## Petitioner's participation in proceedings before the District Court.

On June 21, 1956, more than a month before the District Court approved the Joint Plan, Petitioner filed objections (R. 24,345-47). On June 28, 1956 the Trustee's counsel wrote Petitioner and advised him that if he had anything to say in support of his objections, he should attend the hearing which had been adjourned to July 5, 1956. Petitioner acknowledged receipt of this communication but did not attend the adjourned hearing. (R. 23,416; 22,629.) Thus it cannot be disputed that Petitioner had current

* General unsecured creditors receive small amounts of the Fifth Avenue stock. No provision is made for the stockholders of Third Avenue because it is insolvent (*ante* p. 6).

** Several representatives of Adjustment bondholders did not support the Joint Plan prior to and during the voting period. However, no persons claiming to be or represent Adjustment bondholders (other than Petitioner) voiced any opposition to confirmation of the Plan (213-38) although notice of the confirmation hearing had been sent to all bondholders (27).

notice of the proceedings then pending before the District Court.

After the Joint Plan was approved, but before it was confirmed, Petitioner made a number of motions (43-55), including motions for orders (a) reopening the question of the insolvency of debtor Third Avenue and for the appointment of an appraiser at the expense of the debtor's estate; (b) for the examination of the Chairman of the Securities and Exchange Commission and the Director and Chief Counsel of its Division of Corporate Regulation and (c) removing the Trustee.

Petitioner made grave allegations of wrongdoing* and then offered no proof whatever in support of them (239-58). His motions were all denied (33).

Petitioner appeared at the hearing to consider confirmation of the Joint Plan and was heard at length (213-36).

### Proceedings in the Court of Appeals.

Petitioner appealed from (a) the order approving the Joint Plan, (b) the order confirming the Joint Plan and (c) the order denying his motions, and raised numerous points which need not be discussed here.

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* He accused the Trustee, among other things, of "a complete lack of interest in the welfare of the stockholders"; an "inimical attitude to the stockholders"; having "deliberately concealed from this Court the fact that the debtor has become solvent" (47); numerous breaches of his "fiduciary duty to the stockholders" (48); having "wilfully disregarded" an order of the court (49); "misrepresentations" (50) and failing to send the stockholders copies of reports (54).

The Securities and Exchange Commission was also the object of his wrath. He charged that "the Commission has failed to give this Court the impartial and expert administrative assistance * * * as required by the Bankruptcy statutes" (46).

On November 30, 1956, the Court of Appeals, in a unanimous opinion,* after "careful consideration" of the "miscellany of points" raised by Petitioner, concluded:

*"There is not a shred of merit in any of them."*••

**The Present Status of the Reorganization Proceedings.**

All corporate and other steps necessary to consummate the Joint Plan, except those referred to below, were effectuated prior to December 17, 1956.

On December 17, 1956, pursuant to an order of consummation of the District Court, a closing was held at which $4,881,090 in cash and 336,088 shares of stock of Fifth Avenue were received by the Trustee from Fifth Avenue in exchange for the stock of Surface Transit, Inc. (the Reorganized Company). The estates in reorganization were turned over to Surface Transit, Inc. and its subsidiaries, and the $8,528,000 of new bonds were issued by Surface Transit, Inc. The cash and securities to be distributed pursuant to the Joint Plan were deposited with the Exchange and Distribution Agents. Distribution thereof to the bondholders and other creditors entitled to receive them has been delayed because of the pendency of the petition herein.

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* The opinion is printed in the petition (pp. 26-33) and is reported in 238 F. 2d, at p. 665.

** Italics are ours throughout this brief.

## Trustee's Contentions.

(1) Chapter X of the Bankruptcy Act explicitly provides that only the claims filed by the holders thereof are to be included in computing the majority necessary for the acceptance of the plan. There is no conflict whatever with the decision of the Court of Appeals for the Seventh Circuit in *In re Kenilworth Bldg. Corporation* (105 F. 2d 673). Chapter X changed the law. The *Kenilworth* case was decided under Section 77B, the predecessor reorganization statute, which did not contain the provision, introduced by Chapter X, that "in computing the majority necessary for the acceptance of the plan only the claims filed by the holders thereof, and allowed, shall be included."

(2) The notices given to creditors and stockholders prior to the approval of the Joint Plan by the District Court complied in all respects with the requirements of Chapter X and, in fact, several notices were given in addition to the notices required by the statute. Furthermore, since Petitioner had actual notice, he would in no way have been prejudiced even if such notices had not complied with such provisions.

## POINT FIRST

**The holding of the Court of Appeals that the majority necessary for acceptance of the Plan is determined by the claims filed by the holders thereof, is required by the plain language of the statute.**

Adjustment bonds in the face amount of $22,215,900 are outstanding in the hands of the public (83). A proof of claim for the entire issue was filed by the indenture trustee thereof. The holders of Adjustment bonds constitute a class of creditors for the purpose of the acceptance of the Joint Plan (11). Proofs of claim were filed by the holders of $15,893,000 face amount of Adjustment bonds, representing 72% of the issue. The holders of $13,328,000 face amount of such bonds voted to accept the Joint Plan (390-91); representing approximately 84%* of the claims filed by the holders thereof but less than 66⅔% of the entire issue.

Petitioner argues that the acceptances of two-thirds of the entire issue ($22,215,900) were required for the confirmation of the Joint Plan. His contention is squarely contradicted by the explicit provisions of Chapter X.

### (a) Applicable Provisions of Chapter X.

Section 179 (11 U.S.C. Section 579) provides, in pertinent part, as follows:

> "After a plan has been accepted in writing, filed in court, *by or on behalf of creditors holding two-*

* Petitioner erroneously states that the Courts below determined the percentage of acceptances by dividing the amount of the acceptances by the amount voting on the Joint Plan (P., pp. 5, 11). On the contrary, the percentage was arrived at by dividing the acceptances by the amount of the claims filed by the holders thereof. In this case the difference is slight since substantially all of the bondholders who filed proofs of claim voted on the Joint Plan (23, 390-391).

*thirds in amount of the claims filed and allowed of each class,* * * * the judge shall fix a hearing, * * * for the consideration of the confirmation of the plan and of such objections as may be made to the confirmation."

Section 198 (11 U.S.C. Section 598) supplements Section 179 and provides as follows:

> "An indenture trustee may file claims for all holders, known or unknown, of securities issued pursuant to the instrument under which he is trustee, who have not filed claims: *Provided, however,* That *in computing the majority necessary for the acceptance of the plan only the claims filed by the holders thereof, and allowed, shall be included.*"

The Court of Appeals, addressing itself to Petitioner's contention, stated:

> "* * * appellant urges that the order confirming the plan is invalid because of failure to comply with Section 179, which requires acceptance 'by or on behalf of creditors holding two-thirds in amount of the claims filed and allowed in each class.' The undisputed facts are that some 84 per cent in amount of the holders of the adjustment mortgage income bonds who filed claims accepted the plan, but that these assenting bondholders represented less than two-thirds of the total issue. The question is simply whether acceptance by the holders of two-thirds of the entire issue is required or only by the holders of two-thirds of the amount claimed and allowed. *The statute is explicit* on the point, * * *.
>
> * * *
>
> "* * * And *if Section 179 were thought to leave any doubt* as to what that requirement is, *such doubt would be dispelled by Section 198* * * *.
>
> * * *

> "This section also disposes of appellant's contention that for purposes of determining the class, the acceptance of two-thirds of which was necessary, 'it was clearly erroneous for the District Court Judge to require the Adjustment Bondholders individually to file proofs of claim.' "

The statute plainly means what it precisely says. There is not a scintilla of authority to the contrary.

Petitioner, however, indulges in algebra* and argues that:

> "• • • The decision of the Court below is so inconsistent in theory as to leave the intent and meaning of the applicable statute in a state of *confusion*" (P., p. 13).

We respectfully suggest that the only "*confusion*" exists in his petition. Elsewhere, the law is clear. In *Collier on Bankruptcy* (14th Ed., Vol. 6, p. 2865) it is said:

> "Section 198 withholds from an indenture trustee the right to vote the claims for which he files a proof of claim and reserves that right for the individual security holders under the indenture. It is provided 'That in computing the majority necessary for the acceptance of the plan only the claims filed by the holders thereof, and allowed, shall be included.' *This changes the law as it existed under §77B, and means that* even though an indenture trustee files a proof of claim for all security holders under the indenture, *only those holders who have independently filed their claims and secured their allowance will be counted in computing the necessary acceptances of the plan under §179.*"

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* Algebra is not required to determine whether the requisite percentage of acceptances has been received. Simple arithmetic suffices. It is only necessary to divide the amount of the acceptances by the amount of the claims filed by the holders thereof. If, as here, the resultant percentage is 66⅔ or more, the plan has been accepted.

The plain meaning of the provisions of Section 198 is confirmed by the many articles which the enactment of Chapter X brought forth.

Alfred B. Teton, Esq., in his article *"Reorganization Revised"* (48 Yale L. J., 573, 599-600) states:

> "* * * Since Section 77B(e)(1) required consents of ⅔ of all claims allowed, and since claims filed by the trustee were 'allowed claims,' the consents of ⅔ of all creditors, and not only of those who filed individual claims, were necessary. Adoption of such a majority standard, which required balloting by bondholders, including the indifferent or ignorant, unknown or unlisted, made difficult the task of getting the requisite number of consents for even the fairest of plans. Such difficulties could have been avoided by permitting the trustee to vote on behalf of non-voting bondholders, but reluctance to permit the modification of creditors' rights by third persons, * * * led to the general denial of the trustee's right to vote. *To obviate the consequences of making the total outstanding debt the basis for majority computations** while denying vot-

* There is unanimity among the scholars of the Bar, both as to the purpose and the effect of Section 189.

Alfred N. Heuston, Esq., *Corporate Reorganizations* (38 Col. Law Review, 1199, 1218): "A change has been made, however, where bonds or other securities issued pursuant to an indenture are involved. Only the claims filed by the securityholders themselves, and allowed, will be taken into account in computing the acceptances necessary for the confirmation of a plan. The claim filed by the indenture trustee on behalf of all securityholders who have not filed claims will not be considered in this connection. This will make it unnecessary to obtain acceptances from the holders of two-thirds of an entire bond issue. It will only be necessary to obtain acceptances from the holders of two-thirds of the amount of bonds upon which claims have been filed by the holders themselves—conceivably amounting to only a small fraction of the entire bond issue."

John Gerdes, Esq., *Corporate Reorganizations* (52 Harvard Law Review 1, 33-34): "* * * Since securities under trust indentures are

ing privileges to the indenture trustee, a proviso was added to Section 198 to the effect that 'in computing the majority necessary for the acceptance of the plan only the claims filed by the holders thereof, and allowed, shall be included.' While this section facilitates the securing of consents, it severely reduces the number of bondholders entitled to vote on a plan. Section 179 provides that the consents of ⅔ of the claims allowed shall be necessary for adoption of the plan. Since Section 198 provides that only claims filed by individual bondholders and allowed by the court shall be taken into consideration in determining the voting base, the conclusion necessarily follows that only those who filed individual claims are entitled to vote. * * *"

**(b) Cases Cited by Petitioner.**

No extended discussion of the cases cited by Petitioner is called for. Only one case (*In re Kenilworth Building Corp.*, 7 Cir., 105 F. 2d 673) presented the question of the determination of requisite acceptances, and every case cited by him was decided under the former Section 77B and not under the present Chapter X.

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often issued to bearer, with the holders frequently unknown, the necessary majority is computed on the basis of claims filed by the individual bondholders."

Thomas K. Finletter, Esq., *Bankruptcy Reorganization* (p. 502): "* * * Although an indenture trustee may file a claim on behalf of all holders of securities issued under the indenture, only claims filed by the holders of the securities and allowed are included in computing the total amount of creditors in the class for voting purposes."

Emmet McCaffery, Esq., *Corporate Reorganization* (26 California L. R. 643, 654): "* * * An indenture trustee, apparently regardless of whether the provisions of the indenture specifically authorize such action, may file claims for all holders of securities issued under the indenture, but in computing the majority necessary for the acceptance of the plan only the claims filed by holders, and allowed, are to be included."

In the *Kenilworth* case the reorganization proceedings were commenced under Section 77B, prior to the enactment of Chapter X, and had advanced under the provisions of Section 77B to the consideration of confirmation of a plan. At the hearing to consider confirmation, it appeared that only $47,800 out of a total of $112,000 of outstanding bonds had filed acceptances of the plan. The District Court, in finding acceptances by two-thirds of the class, disregarded the claims filed by the trustee of the bond issue and considered only the claims filed by the individual bondholders. The District Judge ruled that Section 198 of Chapter X (*ante*, p. 15) was applicable and that, even under prior practice, the claim of the indenture trustee would not be counted (p. 675).

The Court of Appeals first directed its attention to the construction of the applicable provision of Section 77B and concluded that, under that statute, the claims filed by the indenture trustee were required to be included in determining the voting base.

Chapter X contains a provision that, if the petition in a pending proceeding under Section 77B was approved more than three months before the effective date of the Chapter X, the provisions of Chapter X shall apply to such proceedings to the extent that the Judge shall deem their application "practicable" (Section 276(c)(2), 11 U.S.C. 676(c)(2)). The District Judge ruled that the application of Section 198 of Chapter X was practicable and construed that section as did the District Judge and the Court of Appeals in the instant proceeding.

The Court of Appeals in the *Kenilworth* case, directing itself to this question, stated:

> "Granting that the District Court correctly construed Section 198 of the Chandler Act [Chapter X],

> we are of the opinion that the application of Section 198 is not practicable in view of the rulings of the Court in the course of the reorganization proceedings prior to the submission of the plan * * *."

The Court of Appeals construed "practicable" to mean "feasible, fair and convenient" (p. 676) and held that, since the reorganization had proceeded on the assumption that all claims had to be considered in determining the requisite number of acceptances, it was not "practicable" to exclude the claims filed by the indenture trustee when there had been no opportunity for bondholders to refile their claims so that they would be included in the voting base.

Thus, it appears that the decision in the *Kenilworth* case is limited to (a) the calculation of the voting base under Section 77B and (b) a construction of the word "practicable" in Section 276(c)(2) of Chapter X to meet the facts there presented. There is nothing whatever in the opinion even suggesting any different construction of Section 198 than that required by its plain meaning and adopted by the courts below.

The other cases cited by Petitioner were also decided under Section 77B, the prior statute, and none of them presented for decision any question as to the determination of the voting base.

*In re 333 No. Michigan Avenue Building Corp.* (7 Cir., 84 F. 2d 936) held that Section 77B was constitutional. *Texas Hotel Securities Corp.* v. *Waco Development Co.* (5 Cir., 87 F. 2d 395) held that a claim would not be disqualified from voting because it was acquired during the pendency of the proceeding.

Petitioner also argues that the instant decision "is in direct conflict with the principle enunciated by an Appeals

Court of the same Circuit in 1943," citing *"In re Allied Owners' Corporation* (174 F. 2d 201)." No such case appears in that volume or was decided by the Court of Appeals in 1943. In 1934, however, the Court of Appeals for the Second Circuit decided a case with the same name, which is reported in 74 F. 2d 201. This case, decided under Section 77B, involved "the sole question of a claimed right of the trustee to vote * * * on the plan of reorganization" (p. 202).

Petitioner frequently asserts (P., pp. 7, 9, 10, 12) that the decision of the Court of Appeals in the instant case is "in conflict" with these cases. There can hardly be a "conflict" between cases decided under two different statutes, the latter of which was expressly designed to change the provisions of the former.

We respectfully urge that there is no occasion whatever for a review by this Court with respect to the determination of the requisite percentage of acceptances for confirmation of a plan. The holding of the District Judge, unanimously affirmed by the Court of Appeals, is clearly required by the plain meaning of the applicable statute and is in accord with all the writers. There is no "conflict." In fact, there is no authority to the contrary.

## POINT SECOND

### All requirements of Chapter X with respect to notice to creditors and stockholders were complied with.

Petitioner poses the question "whether the failure of the trustee of debtor to transmit to stockholders and creditors notice of a hearing on approval of a completely new plan of reorganization pursuant to the require-

ments of Chapter X * * * is not violative of due process" (P., p. 2). Although Petitioner refers to "due process" in his "question", he makes no argument with respect thereto.

Petitioner's question assumes that the Trustee failed to transmit the notice required by Chapter X. This assumption is contrary to the fact. Notice pursuant to Section 171 (11 U.S.C. Section 571) was sent to all creditors and stockholders (Exs. 1, 2)* and the hearing was thereafter adjourned from time to time as the notice stated would be the case.**

Petitioner urges that "* * * the Court below is believed to have been in error in holding that the District Court had discretion to disregard the notice requirements of the Bankruptcy Act * * *" (P., p. 16). The Court of Appeals made no such holding.

On the contrary, the District Court and the Court of Appeals, have unanimously held that there was *no* "disregard" or "failure of the Trustee" to transmit any notice required by Chapter X. Both courts have found, after careful consideration, that all requirements of notice were complied with.

Petitioner cites several cases for the proposition that the notice requirements of Chapter X must be complied with (P., pp. 14-15). This is unquestionably true; but the decisions in no way suggest that on the facts of this case there was any inadequacy of notice.

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* The notice was accompanied by a copy of the orignal plan filed by the Trustee, in compliance with Bankruptcy Rule X-18 of the Southern District of New York.

** The Court of Appeals appropriately commented:

> "The notices of plan hearings uniformly state, as did the notice in this case, that the hearings may be adjourned from time to time without further notice other than the announcement of such adjournment in open court."

**Requirements for the Development of a Plan.**

A review of the careful, legislative requirements for the development of plans of reorganization under Chapter X, and of the record, will demonstrate that the holding of the courts below that there was compliance with all notice requirements is beyond question.

**(a) First Required Notice**—The reorganization trustee is required to make an investigation and a report, among other things, on the property, liabilities and financial condition of the debtor, and to send copies thereof to creditors and stockholders together with an invitation to "submit to him suggestions for the formulation of a plan, or proposals in the form of plans" (Section 167, 11 U.S.C. Section 567).

This was done (Trustees' Report and Notice, dated November 28, 1951; R. 23,685-86).

**(b) Second Required Notice**—The trustee is required to prepare and file a plan (or a report why a plan cannot be effected) and the court is required to "fix a subsequent time for a hearing on such plan or report and for the consideration of any objections which may be made or of such amendments or plans as may be proposed by the debtor or by any creditor or stockholder" (Section 169, 11 U.S.C. Section 569).

"Notice of the time of any hearing, as provided in section 169 * * * of this Act, shall be given to the debtor, the creditors and stockholders * * *" (Section 171).

This notice was given (Exs. 1, 2) and the hearing was adjourned, by announcement in open court, to further dates from time to time until the Joint Plan was finally approved.

The Court of Appeals commented thereon as follows:

> "It is not disputed that there was notice of the commencement of hearings following submission of the original plan by the trustee, as well as additional notices preceding approval of the plan. Appellant's position seems to be that further notice is required by the Act. We find no such requirement. On the contrary * * *.
>
> The statute contemplates *a continuous process which may culminate in the approval of a fair* and equitable and feasible *plan, initiated by the filing of the trustee's plan with widespread notice of the commencement of hearings. Creditors and stockholders* and other interested persons *have the right to be heard* and to object or to propose amendments for modifications *and even to file completely new plans.*"

There is no requirement that a separate notice be given for each amendment or new plan that may be proposed during the course of the hearing.*

Petitioner refers to the Joint Plan as a "completely new plan" (P., p. 14) and a "completely different plan" (P., p. 16). The Joint Plan, as it finally evolved from the protracted proceedings, contained many features appearing in prior plans. The provisions with respect to the Third Avenue stockholders were identical with those which appeared in all previous plans filed by the Trustee

---

* In this reorganization, some thirty plans, amendments, and other plan proposals were proposed (24,694-99). As the Court of Appeals succinctly stated:

> "* * * if separate notice were required as a condition precedent to the consideration of every amendment or modification or to the resumption of hearings following a recess, it is plain that any party so minded could delay the proceeding indefinitely and cause needless and prohibitive expense."

and the bondholders' committees. No participation was provided because Third Avenue was hopelessly insolvent (*ante*, p. 6).

**(c) Securities and Exchange Commission**—"After the hearing, as provided in section 169 * * *, and before the approval of any plan, as provided in section 174 of this Act, the judge * * * shall, if [the] indebtedness exceeds $3,000,000, submit to the Securities and Exchange Commission for examination and report the plan or plans which the judge regards as worthy of consideration" (Section 172, 11 U.S.C. Section 572).

This also was done. A number of plans which were regarded by the District Judge as worthy of consideration were referred to the Securities and Exchange Commission for examination and report (*ante*, pp. 6-8).

"The judge shall not enter an order approving a plan submitted to the Securities and Exchange Commission until after the Securities and Exchange Commission has filed its report thereon * * *" (Section 173, 11 U.S.C. Section 573).

This also was done. Before the District Judge entered his order approving the Joint Plan, the Securities and Exchange Commission had filed its report thereon (149-170), concluding "that this plan is fair and equitable and feasible" (149).

**(d) Public Service Commission**—"In case a debtor is a public utility corporation, wholly intrastate, subject to the jurisdiction of a State commission having regulatory jurisdiction over such debtor, a plan shall not be approved, as provided in section 174 of this Act, unless such State commission shall have first certified its approval of such plan as to the public interest therein and the fairness thereof" (Section 178, 11 U.S.C. Section 578).

This also was done. The N. Y. Public Service Commission certified its approval of the Joint Plan (*ante*, p. 8).

**(e) Order of Approval**—"After the hearing, as provided in section 169 * * * of this Act, and, if a plan has been submitted to the Securities and Exchange Commission, as provided in section 172 of this Act, then after the filing of the report * * *, the judge shall enter an order approving the plan or plans which in his opinion comply with the provisions of section 216 of this Act, and which are fair and equitable, and feasible, and shall fix a time within which the creditors and stockholders affected thereby may accept the same" (Section 174, 11 U.S.C. Section 574).

This also was done. The District Judge entered the order approving the Joint Plan after the Public Service Commission had certified its approval, the Securities and Exchange Commission had filed its favorable report and he had found that the Joint Plan complied with the provisions of Section 216 of Chapter X (11 U.S.C. Section 616) and was fair and equitable, and feasible (8-13).

**(f) Third Required Notice**—Provision is made for the transmission of the plan of reorganization and information concerning it to creditors and stockholders after approval of the plan (Section 175, 11 U.S.C. Section 575). This must be done before the commencement of voting on the plan (Section 176, 11 U.S.C. Section 576).

This was done (Ex. 456).

**(g) Fourth Required Notice**—Following approval by the Court, and a favorable vote, notice is required of the hearing on the confirmation of the plan (Section 179, 11 U.S.C. Section 579).

Section 179 provides:

> "* * * the judge shall fix a hearing, upon notice to the debtor, creditors, stockholders, * * * and such other persons as the judge may designate, for the consideration of the confirmation of the plan and of such objections as may be made to the confirmation."

This was done. The District Judge fixed a hearing and provided for notice thereof (14-17). Such notice was given (27; Ex. 459). The hearing was had, Petitioner appeared, and the Court considered his objections (213-38).

**(h) Order of Confirmation**—After the hearing on confirmation provided for in Section 179, the judge shall confirm a plan if satisfied that the plan is fair and equitable, and feasible and that the other requirements in Section 221 have been met. This is the culmination of the development of a plan of reorganization as at this time the plan becomes binding upon all creditors and stockholders (*post*, p. 29).

The Court, being satisfied that the Joint Plan was fair and equitable, and feasible and that the other requirements had been met, entered the order confirming the Joint Plan (27-32).

---

Thus it appears that *the statute contemplates a series of steps* in the proceeding and that the Congress has provided for the following notices in connection therewith (i) *notice* of the opportunity of security holder participation in the formulation of the original plan; (ii) *notice of the hearing to consider the original plan and such amendments, objections* and *other plans* as may be submitted; (iii) *notice* (including a copy of the plan) at the time of voting and (iv) *notice of the hearing to consider confirmation of the plan.* All of these notices were duly given.

**Additional Notices Given in This Proceeding**

In addition to the above four notices which Chapter X requires be given in connection with the development of a plan of reorganization (all of which were given), the following two additional notices were given during the course of the development of the Joint Plan:

> **(a) In July 1954 a report was sent by the Trustee to all creditors and stockholders notifying them, among other things, of the progress of the plan hearings and of their continuance (R. 23,774).**
>
> **(b) In June 1955 all creditors and stockholders were sent further notice, among other things, of the continuance of the plan hearings (36-42; 62-63).**

Accordingly, we respectfully submit that the District Court and the Court of Appeals were clearly right in holding that there had been full compliance with the statutory requirements of notice. Petitioner's repeated statements to the contrary, unaccompanied by any argument or authority whatsoever, do not create any issue meriting a review by this Court.

## POINT THIRD

**Even if the notice given to creditors and stockholders with respect to the hearing at which the District Court approved the Plan had not complied with the requirements of Chapter X, Petitioner would not have been prejudiced.**

The record of Petitioner's participation in the proceedings shows that he had current notice of the hearing at which the District Court was considering the approval of the Joint Plan (*ante*, p. 10).

In addition, the *approval* of the Joint Plan in no way affected the substantive rights of Petitioner. A plan does not become binding upon creditors and stockholders until it is *confirmed*. Section 224 (11 U.S.C. Section 624) provides that

> "Upon *confirmation* of a plan (1) *the plan* and its provisions *shall be binding* upon * * * all creditors and stockholders * * *."

That the order *approving* the Joint Plan did not affect the substantive rights of Petitioner is manifest from Section 180 (11 U.S.C. Section 580) which provides:

> "The order of the judge *approving* a plan, as provided in section 174 of this Act, shall not affect the right of * * *, a creditor, * * * or stockholder to object to the *confirmation* of the plan."

Petitioner was heard at length at the confirmation hearing (213-36).

It thus appears that even though the required notices prior to the approval of the Joint Plan had not been sent (and in fact they were sent), Petitioner would in no way have been prejudiced by such failure.

## CONCLUSION

**There is no occasion for review by this Court. The petition should be denied.**

Respectfully submitted,

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*Attorney for Lester T. Doyle, Trustee, Respondent.*

WILLIAM J. O'SHEA,
JOHN A. KISER,
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*of Counsel.*

Dated: February 14, 1957.

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# In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 714

A. PHILIP WOOLFSON, *Petitioner*

v.

LESTER T. DOYLE, As Trustee in Reorganization, et al.[1]

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit**

## BRIEF FOR THE SECURITIES AND EXCHANGE COMMISSION IN OPPOSITION

### OPINIONS BELOW

The opinion of the Court of Appeals (Pet. 26-33) is reported at 238 F. 2d 665. There was no opinion by the District Court except a memorandum opinion accompanying its order approving the plan of reorganization, which opinion did not deal with the issues here involved.[2]

[1] The Securities and Exchange Commission is a statutory party to this reorganization proceeding pursuant to Section 208 of the Bankruptcy Act (11 U.S.C. 608).

[2] The facts giving rise to one of the issues had not yet occurred (Question 1, *infra*); the other issue (Question 2, *infra*) had not been raised.

## JURISDICTION

The judgment of the Court of Appeals was entered on November 30, 1956. The petition for certiorari was filed on January 25, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTIONS PRESENTED

1. Whether, under Chapter X of the Bankruptcy Act, the requisite two-thirds acceptance by classes of creditors of a plan of reorganization is to be computed on the basis of the amount of individual proofs of claim filed or on the basis of the entire amount of the outstanding securities for which claims have been filed by an indenture trustee.

2. Whether, under Chapter X of the Bankruptcy Act, notice given at the commencement of hearings on a plan of reorganization and on objections, amendments or other proposals is sufficient or whether further notice is necessary of the continued hearings on amended plans or other proposals.

## STATUTE INVOLVED

There are involved various provisions of Chapter X of the Bankruptcy Act, primarily Sections 169 (11 U.S.C. 569), 171 (11 U.S.C. 571), 179 (11 U.S.C. 579) and 198 (11 U.S.C. 598). These and other sections of the Act are set forth in Appendix A to the petition (pages 19-25).

## STATEMENT

On November 6, 1952, the trustee filed a plan of reorganization and on that date an order was entered fixing a time for a hearing on the plan, on objections or amendments thereto, and on other plan proposals. Copies of the plan and notice of hearing were sent by

mail, among others, to all known creditors and stockholders of record (R. 3). In accordance with the terms of the notice, from the date of the commencement of these hearings early in 1953 and until the approval of a "Joint Plan" of reorganization in July, 1956, the hearings to consider approval of plans of reorganization proceeded continuously by way of adjournment from date to date. During that continous hearing numerous proposals were advanced by creditors and stockholders or their representatives; in addition, pursuant to orders of the court, the Securities and Exchange Commission and the New York State Public Service Commission reported upon plans of reorganization or modifications referred to them.[3]

In June, 1955, after the filing by the trustee of an amended plan (R. 3), another notice was mailed to all known creditors and stockholders of record noting the continuance of the hearings and summarizing the contents of the trustee's amended plan (R. 36-42; 62-67). And in December, 1955, during the pendency of the hearings, a further notice of continued hearings was mailed to the debtors' known creditors. Moreover, apart from these additional notices, the trustee in June, 1954, transmitted to creditors, stockholders and other interested parties copies of his Fifth Report, which reviewed, among other developments, the course of hearings to that time and advised of their continuance.

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[3] A report was filed by the Securities and Exchange Commission pursuant to Section 173 (11 U.S.C. 573) of the Bankruptcy Act on May 8, 1956 (R. 70-145) and two supplemental reports were filed thereafter (R. 146-170). These reports contain a detailed description of the debtors' business and their history prior to and during the proceeding (R. 71-86). They also summarize the provisions of the Joint Plan (R. 153-157), the approval and confirmation of which the petitioner seeks to review.

On July 26, 1956, the District Judge approved the Joint Plan of Reorganization (all other proposals having been abandoned or withdrawn), which had been certified as in the public interest by the New York State Public Service Commission and which had been found fair and equitable, and feasible by this Commission (R. 11).

After approval of the Joint Plan, an order was entered on August 13, 1956, pursuant to Section 175 of the Act (11 U.S.C. 575), directing that there be sent to creditors and stockholders affected by the plan, the plan, an approved summary thereof, the judge's opinion approving the plan, and a summary of this Commission's advisory reports, together with relevant financial and other material. The order directed the submission of the Joint Plan to those persons affected by the plan and entitled to vote. The trustee's report with respect to the acceptance of the plan shows that 77.4% in amount of Refunding Bondholders had filed proofs of claim entitling them to vote and that of these 99.2% had accepted; 71.5% in amount of Adjustment Income Bondholders had filed proofs of claim entitling them to vote and of these 83.8% had accepted (R. 22-26; 390-391). On the basis of these acceptances of the plan, an order was made fixing a hearing to consider confirmation of the plan or such objections as might be made to confirmation and directing notice of such hearing, pursuant to Section 179 of the Act (11 U.S.C. 579), to the debtors, their creditors and stockholders and others (R. 14-18).

After petitioner and others appeared and had been heard in objection to confirmation (R. 213-238), the judge confirmed the plan on October 8, 1956.

## ARGUMENT

The District Court and the Court of Appeals both held that the Plan of Reorganization had been properly accepted by the requisite majorities, by classes, of the individual claims filed and allowed and that all notice provisions of the Bankruptcy Act had been fully complied with. These decisions are clearly correct and present no conflict, or inconsistency whatever, with the ruling of any lower court. Accordingly, there is no need for further review.

1. Under Chapter X of the Bankruptcy Act, voting upon a plan is by classes with acceptance, in the case of creditors (constituting the only classes of security holders in this proceeding entitled to vote), required by those "holding two-thirds in amount of the claims filed and allowed" (Section 179). While Section 198 (11 U.S.C. 598) provides for the filing of claims by an indenture trustee on behalf of the entire class of holders "of securities issued pursuant to the instrument under which he is trustee," it contains an express proviso that " . . . in computing the majority necessary for the acceptance of the plan only the claims filed by the holders thereof . . . shall be included." That the proof of claim filed by the indenture trustee is intended "to protect bondholders", while voting majorities are to be computed on the basis of claims filed by individual holders, is amply supported by the legislative history of Chapter X.[4] Further, as noted in

[4] "Section 198 empowers indenture trustees to protect bondholders under indentures by filing proofs of claims for such bondholders who have not themselves filed their claims. It is provided that only the claims filed by the holders thereof, and allowed, are to be included in computing the majority requisite to the acceptance of a plan." (S. Rep. No. 1916, 75th Cong., 3rd Sess.

the brief of the reorganization trustee in opposition, pages 11-12, text and other writers unanimously agree not only that this is the clear and plain meaning of the statute, but also that the 1938 amendments of the Bankruptcy Act effected a change in the voting procedures theretofore employed under Section 77B (11 U.S.C. 207 (1934 ed.)).

Petitioner alleges a conflict upon the basis of *In re Kenilworth Building Corporation,* 105 F. 2d 673 (C.A. 7); *In re 333 North Michigan Avenue Building Corporation,* 84 F. 2d 936 (C.A. 7); *Texas Hotel Securities* v. *Waco Development Co.,* 87 F. 2d 395 (C.A. 5); *In re Allied Owners' Corporation,* 74 F. 2d 201 (C.A. 2). (Pet. 9-12.) Each of these cases was decided under Section 77B of the Bankruptcy Act, the predecessor to Chapter X. Express provision for acceptance by creditors "holding two-thirds in amount of the claims of each class whose claims have been allowed and would be affected by the plan" was required (Section 77B(e)(1), 11 U.S.C. 207(e) (1934 ed.)); there was no provision comparable to the present Section 198. Thus, under Section 77B the entire outstanding issue of securities, for which the indenture trustee files proof of claim, was the voting base for the acceptance of a plan. The change effected by the 1938 amendment was intended to overcome the difficulties encountered in procuring a fixed amount of acceptances, particularly in those

(1938) 32. See also Hearings on H.R. 8046 before House Judiciary Committee, 75th Cong., 1st Sess. (1937) 299.)

Participation in the plan is also assured, notwithstanding the failure to file an individual proof of claim, by Section 224(4) (11 U.S.C. 624(4)), which provides for participation where "claims or stock have been listed by the trustee or scheduled by the debtor in possession . . . ." Invariably issues of public securities are so listed.

situations involving bearer securities. There is thus no conflict.

In the instant proceeding, it is manifest not only that the computation of the voting majorities was appropriately made in accordance with the Bankruptcy Act, but also that the voting base (the aggregate of individual proofs of claim filed and allowed) was adequately representative of each class.

2. Petitioner urges that the order approving the Joint Plan prior to its submission to the creditor classes for acceptance was improperly made because no general notice of the consideration of that particular plan was given. Petitioner's contention that such notice is required finds no basis in the statute and arises from a misconception of the notice provisions of Chapter X as to plan promulgation.

After the appointment of a trustee, the Act requires the submission of a report respecting the affairs of the debtor to all creditors and stockholders and others (Section 167(5) (11 U.S.C. 567(5)) and the invitation from them of suggestions for the formulation of a plan (Section 167(6) (11 U.S.C. 567(6)).[5] The trustee is then required to file a plan, or a report why no plan can be effected, and the judge is required to fix a hearing to consider such plan or report and "any objections which may be made or of such amendments or plans as may be proposed by the debtor or by any creditor or stockholder" (Section 169 (11 U.S.C. 569)). Notice of that hearing is, by Section 171 (11 U.S.C. 571), required to be given to, among others, all creditors and stockholders.

---

[5] "The trustee under this provision is the 'clearing house' for such proposals and plans". Sen. Rep. No. 1916, 75th Cong., 3rd Sess. (1938) 30.

A continuous process of hearings then begins, looking toward the approval of such plan or plans as may be found to be "fair and equitable, and feasible". The process encompasses not only the presentation of testimony and evidence but also the submission of amendments, modifications or other plan proposals, the reference, in appropriate cases, of those plan proposals regarded by the judge as worthy of consideration to this Commission for examination and report (Section 172 (11 U.S.C. 572)), and, as in this case, where the debtor is an intrastate utility corporation, certification as in the public interest of any plan which the judge will be requested to approve (Section 178 (11 U.S.C. 578)).*

After the initial notice required by Section 171 of the Act and until approval by the judge of a plan or plans, the Act provides for no further notice of additional plan proposals or of any other intermediate step in the hearing proceedings relating to plans. The initial notice of hearings uniformly, as it did in this case (Trustee's Ex. 2 to hearings on plan), advises of the right to be heard and to file objections, amendments or other proposals and that the hearings may be adjourned from time to time without further notice other than the announcement of such adjournment in open court. Apart from questions of expense, a requirement for notice of each plan proposal would involve a procedure so cumbersome as to render the process of plan promulgation almost unworkable. It would also make available a

* In many instances, after the submission by this Commission of its Advisory Report, further amendments or modifications intended to meet the Commission's views are filed and then referred to the Commission; in such instances the Commission has filed supplemental reports.

powerful weapon to one seeking to delay or obstruct the proceeding.

Moreover, after a plan has been approved by the judge it is transmitted to all creditors and stockholders affected for their vote thereon, and thereafter the Act assures to the parties the independent right to object to its confirmation. The hearing to consider confirmation of the plan is required by Section 179 to be upon notice to all creditors and stockholders, among others, and the Act provides further that the prior order of approval "shall not affect the right of the debtor, a creditor, indenture trustee, or stockholder to object to the confirmation of the plan" (Section 180 (11 U.S.C. 580)). It is the confirmation of a plan of reorganization which makes it "binding upon the debtor . . . and upon all creditors and stockholders. . . ." (Section 224(1) (11 U.S.C. 624(1)).

The notice provisions in connection with promulgation of a plan in this proceeding have been fully complied with and none of the cases relied on by the petitioner (Pet. 14-15) give any indication to the contrary.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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FEBRUARY 1967.

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Office - Supreme Court,
FILED
MAR 2 7 1957
JOHN T. FEY, Cle

IN THE

# Supreme Court of the United States

OCTOBER TERM 1956

**No. 714**

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IN THE MATTERS

*of*

THIRD AVENUE TRANSIT CORPORATION, *et al.*,

*Debtors.*

---

A. PHILIP WOOLFSON,

*Petitioner,*

*against*

LESTER T. DOYLE, as Trustee in Reorganization, *et al.*,

*Respondent.*

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## PETITION FOR REHEARING OF ORDER DENYING PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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*Respondent.*

## PETITION FOR REHEARING OF ORDER DENYING PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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*To the Supreme Court of the United States:*

SIRS:

Petitioner petitions this Court for rehearing of its order of March 11, 1957 denying petitioner's above-noted petition for certiorari on the following grounds:

1. The Securities and Exchange Commission exceeded its authority in submitting a brief in opposition to the aforementioned petitions for certiorari; the Solicitor-Gen-

eral of the United States exceeded his authority in submitting such brief on behalf of the S.E.C. to this Court; this Court erred in giving consideration to such brief.

2. The authority of the Securities and Exchange Commission to appear as a party in the instant case in limited by Section 172 of the Bankruptcy Act, 11 U.S.C.A. Sec. 572. In Chapter X proceedings the function of the Securities and Exchange Commission is solely to submit to the District Court an advisory opinion with respect to proposed reorganization plans.

3. The Securities and Exchange Commission has, in an affidavit presented to the District Court in opposition to petitioner's motion to examine the Securities and Exchange Commission (R. p. A68-69), established the limits of its authority in the instant case.

4. The Securities and Exchange Commission has apparently adopted the philosophy that the end justifies the means. This is a philosophy that is alien to our judicial tradition.

**For the foregoing reasons petitioner requests this Court for rehearing of order denying petitioner's petition for certiorari in the above-entitled matter.**

Respectfully submitted,

A. PHILIP WOOLFSON,
*Attorney Pro Se.*

**Certificate**

I do hereby certify that the within petition is restricted to the grounds specified in the applicable provisions of Rule 58 of the Supreme Court Rules and that it is presented in good faith and not for purposes of delay.

A. PHILIP WOOLFSON,
*Attorney Pro Se.*

Dated: March 25, 1957